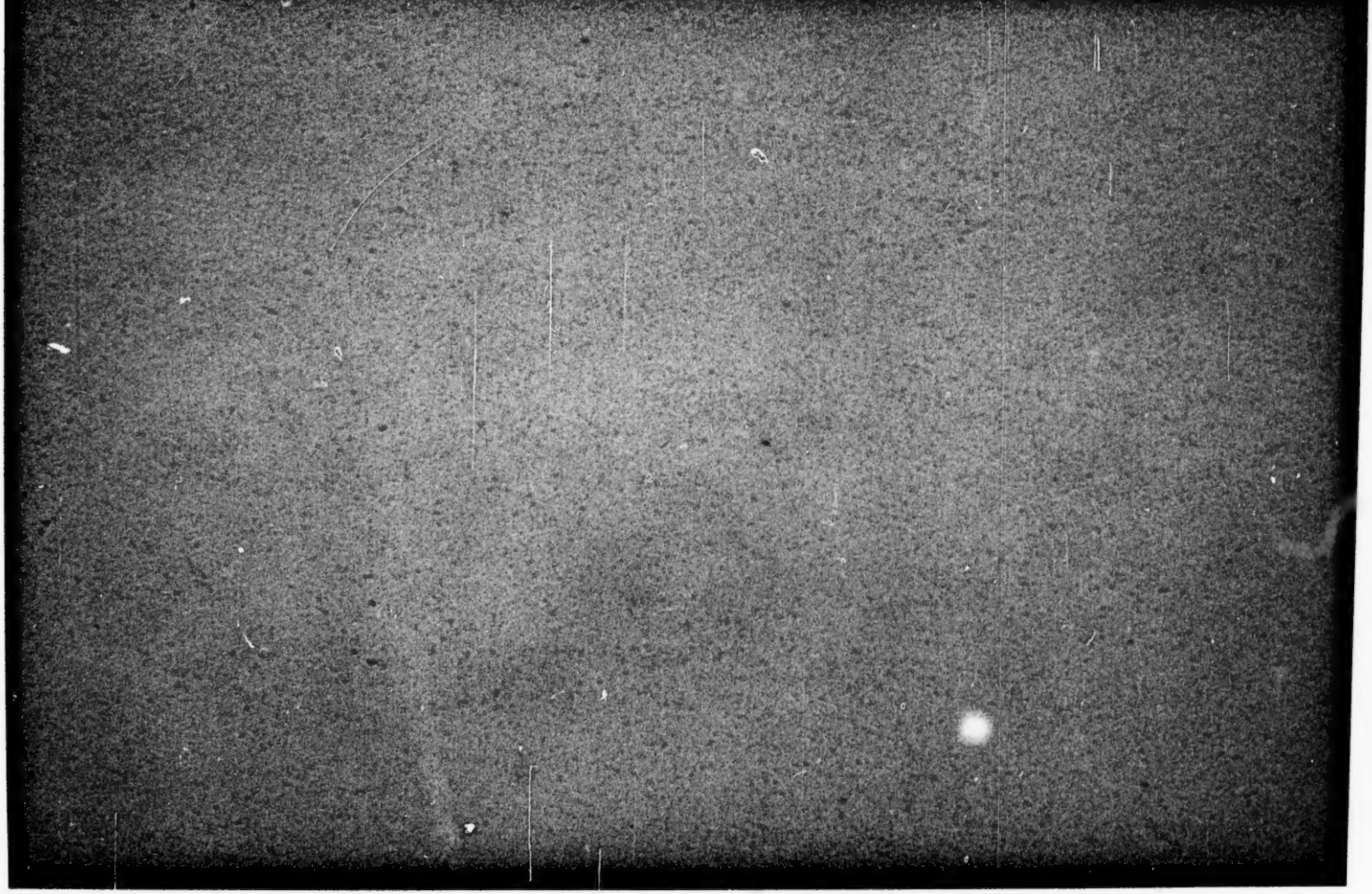

SUPREME COURT, U. S.
74-639
DEC 19 19
MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

October Term, 1974

THE STATE OF CONNECTICUT
and ROSE SANTINI, as Administratrix of the
Estate of ALDO SANTINI, Deceased,
Petitioners

against

HOWARD KLARMAN, THE TOWN OF WESTPORT
and FRED KELLOGG, JR.,
Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DION W. MOORE,
Counsel for Respondent,
Howard Klarman
855 Main Street
Bridgeport, Connecticut 06604

FREDERICK L. COMLEY,
Of Counsel.

TABLE OF CONTENTS

Page

Questions Presented 1

Statement of Facts 2

Reasons for Denying the Writ 3

A. There are no special or important reasons for review 3

B. There is no conflict between this case and any other decision in the circuits or this court 4

C. Petition for limitation 6

D. The equal protection claim was not raised in the court below 6

Conclusion 6

TABLE OF CASES

Page

Flanagan v. F. H. Gilligan, 170 F. Supp. 793 (S.D.N.Y. 1958) 5

Grigsby v. Coastal Marine Service, 412 F. 2d 1011 (5th Cir. 1969) 4, 5

McDaniel v. Lisholt, 257 F. 2d 538 (2nd Cir. 1958) 5

Nikiforow v. Rittenhouse, 277 F. Supp. 608 (E.D.Penn. 1972) 5

Nikiforow v. Rittenhouse, 319 F. Supp. 697 (E.D.Penn 1972) 5

Ryan Stevedoring Co. v. Pan-Atlantic Corp., 350 U.S. 124 (1956) 4

Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946) 3, 4

Stavola v. Palmer, 136 Conn. 670 (1950) 2

Williams v. Pennsylvania Railroad Co., 313 F. 2d 203 (2nd Cir. 1963) 5

IN THE

Supreme Court of the United States

October Term, 1974

THE STATE OF CONNECTICUT
and ROSE SANTINI, as Administratrix of the
Estate of ALDO SANTINI, Deceased,
Petitioners,

against

HOWARD KLARMAN, THE TOWN OF WESTPORT
and FRED KELLOGG, JR.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Howard Klarman, your respondent, hereby opposes petitioners' prayer for a writ of certiorari docketed on November 23, 1974, and requests that it be denied for the reasons set forth below.

QUESTIONS PRESENTED

1. Does the petition present any special and important reasons for review by this court?

2. Do the facts and law of the instant case conflict with any decisions in other circuits or the decisions of this court?

STATEMENT OF FACTS

As petitioners have presented a statement of the case which is substantially different from the facts found by theDistrict Court, the following recital is presented to correct those inaccuracies. See: Rule 40 (3). — Rules of the Supreme Court of the United States.

Aldo Santini, an auxiliary police officer, was assigned as an observer on the vessel "Marine I" in connection with his on-the-job training. (Pet.App.-32).[1] Santini was not assigned to work aboard the police launch, "Marine I," nor was he actively assisting in the patrol being carried on by the launch. In point of fact, he was assigned no specific duties (Pet.App.-32) and was a spectator aboard the launch. (Pet.App.-36). Santini was clearly not a member of the crew of the sloop "Fling," nor did he ever come aboard that vessel. (Pet.App.-34). His connection, such as it was, was solely and exclusively with "Marine I" at the time of his injury.

Santini was insured under the Workmen's Compensation Act, and his widow received substantial compensation benefits thereunder. (Pet.Brief-4). However, the State of Connecticut is entitled to no reimbursement. Section 31-293 of the Connecticut General Statutes gives to an employer a substantive right of reimbursement only if that right is asserted and proved, **Stavola v. Palmer**, 136 Conn. 670 (1950). In the instant case, the state never appeared at trial and offered no evidence — having proved nothing, it is entitled to nothing.

---

[1] Pet.App.- refers to petitioners' appendix; Pet.Brief- refers to petitioners' brief. The petitioners will sometimes herein be referred to as "Santini."

REASONS FOR DENYING THE WRIT

A. There are no special or important reasons for review.

It is axiomatic that this court will not grant a petition for writ of certiorari unless there are presented special and important reasons therefor. See: Rule 19 — Rules of the Supreme Court of the United States. The instant case presents a unique factual situation involving a "gallimaufry of real or imaginary admiralty claims and defenses," (Pet.App.-30) not likely to be presented again involving the peculiar status of an auxiliary policeman assigned as an observer aboard a police boat.

Santini was clearly not a crew member, employee, salvor, or seaman with respect to the sloop "Fling" and was owed no duty from Klarman, the "Fling," or her crew other than the duty to exercise reasonable care under the circumstances then and there existing.

On this issue there can be no doubt about Klarman's exercise of due care. As the District Court noted:

> We find, however, that Klarman's conduct was not negligent in any respect; that he acted in the manner of a reasonably prudent owner of a sloop that was grounded; that he did not know, or should he have known, that the winch was improperly secured to its pedestal; that, because of his prior use of the same winch for the same purpose and with a line, he reasonably could rely on its security; and that, as a matter of good seamanship, the winch was a proper appliance to use in the circumstances.

It is just as clear that Santini was not a "Sieracki" seaman of the sloop "Fling" under the doctrine of **Seas Shipping Co. v. Sieracki**, 328 U.S. 85 (1946). There was

no employment relationship between Santini and "Fling" under any definition of that term. However, even if he had been a seaman in the "Sieracki" sense, the Congress has passed legislation subsequent to the filing of this action which supports the view that claims for unseaworthiness against the owner of a vessel by remote "Sieracki" type personnel should be eliminated. The Longshoremen and Harbor Workers Compensation Act, P.L. 92-576 §18, 86 Stat. 1251 (1972). The legislative history of that act noted that the doctrine of seaworthiness, designed to protect seamen from the extreme hazards of long sea voyages and duties not generally required of other workers, had no rational application to the longshoremen and other non-seamen working on board a vessel. U.S. Code & Cong. & ADM News, p. 4703 (1972). **A fortiari**, a warranty of seaworthiness does not and should not run from a vessel to a disinterested observer with absolutely no connection with the vessel.

From the foregoing, it is apparent that on both the facts and the law this case like the **Ryan**[2] line of cases will have historic interest only. As such, it presents no special or important reasons for review.

B. There is no conflict between this case and any other decision in the circuits or in this court.

Petitioners claim that the decision of the Court of Appeals for the Second Circuit is in conflict with the decision of the Fifth Circuit in **Grigsby v. Coastal Marine Service**, 412 F.2d 1011 (5th Cir. 1969). Even assuming that Judge Brown writing for the Fifth Circuit has properly interpreted the law to characterize those persons who perform humane acts under the generic classifica-

---

[2]**Ryan Stevedoring Co. v. Pan-Atlantic Corp.**, 350 U.S. 124 (1956).

tion of "seamen," it is clear from the finding in the instant case that Santini was not and did not engage in any act of rescue which, of course, was the basis for Judge Brown's opinion. Judge Murphy, writing for the District Court in the instant case, addressed himself specifically to that question. He concluded that there was no act of rescue which could be attributed to Santini — he was merely a spectator and a victim. Hence, on this basis, it is clear that the case of **Grigsby v. Coastal Marine Service, supra**, and **Nikiforow v. Rittenhouse**, 277 F. Supp. 608 (E.D.Penn. 1972) are clearly distinguishable.[3]

No case has been found in this or any other court where a passive observer unconnected with any vessel has been extended a warranty of seaworthiness. Such an expansion of liability without fault simply does not exist — nor are there any valid reasons for its creation, especially where, as in the instant case, full compensation benefits are available.

Quite apart from the foregoing, there is no dispute regarding the extension of the warranty of seaworthiness to individuals not connected with the vessel, and Santini, even if a seaman, was a seaman of "Marine I" and not the "Fling." See: **Williams v. Pennsylvania Railroad Co.**, 313 F.2d 203 (2nd Cir. 1963); **McDaniel v. Lisholt**, 257 F.2d 538 (2nd Cir. 1958); **Flanagan v. F. H. Gilligan**, 170 F. Supp. 793 (S.D.N.Y. 1958). The warranty of seaworthiness then, if it exists at all, runs from "Marine I," and that vessel was found by the District Court to be seaworthy in all respects.

---

[3]It is interesting to note that Judge Lord's opinion on preliminary motions was not adopted in the ultimate determination of the case, which rested upon negligence. See: **Nikiforow v. Rittenhouse**, 319 F. Supp. 697 (E.D.Penn. 1972).

Both the District Court and the Court of Appeals were correct in their application of the facts to the legal principles involved. Both decisions were in conformity with the opinions of this court and the other circuits.

C. Petition for Limitation

Santini sometimes loses sight of the fact that this action is a petition for limitation filed on behalf of the sloop "Fling" which was found to have a value of $7,500.00. (Pet.App.-29) It has already been determined by the District Court that the owner and crew of the "Fling" were free from fault. As it was also found that there was no warranty of seaworthiness running from the "Fling" to Santini, it was not necessary for the District Court to discuss the limitation issue. 84-H, 296 F. 427, 431 (2nd Cir. 1923). However, it remains in the case, and insofar as any liability may attach to the sloop "Fling," that liability must be limited to the value of the vessel or $7,500.

D. Petitioners equal protection claim.

At point 4 in his argument petitioner appears to raise for the first time a constitutional argument relating to a denial of equal protection. The claim is purely frivolous and, in any event, was never raised in the court below.

CONCLUSION

For the above reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Dion W. Moore
Pullman, Comley, Bradley
& Reeves
855 Main Street
Bridgeport, Connecticut 06604

Of Counsel:
Frederick L. Comley